REMARKS

Claims 12, 16, 18, 19, 21, and 22 are now pending in the application. Claims 13-15, 17, 20, 23-25 are canceled without prejudice. Withdrawn claims 26-37 are canceled. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 102

Claims 12-25 stand rejected under 35 U.S.C. § 102(b) as being anticipated by McCarthy et al (U.S. Pat. No. 5,846,245). This rejection is respectfully traversed.

Claims 13-15, 17, 20, 23-25 are canceled without prejudice.

Applicants find the Office Action confusing because it does not adequately explain which embodiment of McCarthy et al is applied to the claims. For example, all the elements referenced (350, 346, 384, 385, 380) are taken from FIG. 15, although reference is also made to FIGS. 4-6 and 13 which correspond to different embodiments. For this reason, the various embodiments of McCarthy et al are briefly discussed below.

Applicants' currently pending claims recite a **unitarily formed** central member having a longitudinal axis with **arcuate** first and second ends and corresponding pluralities of teeth.

McCarthy et al discloses a bone adjusting device with various alternative embodiments. The embodiment shown in FIGS. 1-4 includes two **ring-shaped gears**: 84, 94. The embodiment shown in FIG. 15 is described as having two semicircular gears 384, 385 (not shown) fixed to each other. See column 10, lines 31-44. The embodiment shown in FIGS. 13 and 14 includes two **separate** angular-adjustment

support pieces 275, each having a U-shaped gear section 271. See column 9, lines 29-41. The embodiment of FIG. 16 includes a ring-shaped gear 494 and a separate V-gear 484. See column 11, lines 13-18 and lines 22-26. The embodiment of FIG. 17 is described as substantially the same as the embodiment of FIG. 1. See column 11, lines 38-44. The embodiment of FIG. 18 is described as substantially the same as the embodiment of FIG. 17. See column 11, lines 45-51. The embodiment of FIGS. 19-20 includes ring-shaped gears 784. See column 11, lines 52-54.

With the possible exception of the embodiment of FIG. 15, none of the other embodiments disclosed in McCarthy et al can meet the limitations of independent clams 12, 18, and 22, which are directed to a **unitarily formed central member** having first and second **arcuate ends** having first and second pluralities of teeth. Accordingly, only the embodiment of FIG. 15, which is described as having two gears fixed to each other and having semi-circular shape, is discussed below under the 102(b) rejection of the Office Action.

FIG. 15 of McCarthy et al shows only one of the two gears: gear 384. See column 10, lines 36-38. The two gears are also described as perpendicular to one another. The teeth of the gears 384, 385 mate with the threads of angular adjustment-screws 388, 398, which are shown as coaxial in FIG. 15. Reference is also made to FIGS. 4-6, which show corresponding coaxial adjustment screws 88 and 99. See column 10, lines 45-50 and FIGS. 15 and 4. Because the second gear 385 is not shown, the manner of attachment of the two gears is not shown, and accordingly there is no disclosure as to the shape of a unitary body defined by gears 384, 385.

Regarding independent claim 12, McCarthy et al fails to disclose, inter alia, that the flanges on which the teeth are formed having narrowing widths away from the first and second arcuate ends. Because only one gear is shown in FIG. 15, it cannot be determined how the gears are fixed to one another, apart from the disclosure that they are perpendicular to one another. Further, McCarthy et al, fails to disclose, inter alia, first and second worm members meshingly engaging the first and second pluralities of teeth, wherein the second worm member is substantially perpendicular to the first worm member, as claim 12 recites. The corresponding angular adjustment elements 388, 399 of McCarthy et al are not substantially perpendicular to one another.

The Office Action appears to identify the wheels 346, 347 of FIG. 15 as the arcuate ends and flanges. Elements 346 are not attached to one another and therefore cannot define a unitarily formed central member. Further, the wheels 346, 347 engage the threaded arms 320, such when the wheels are rotated about the arms 320, the bone clamps 340, 360 move **linearly** relative to the arms 320. Therefore, these elements provide the translational adjustment and not the pivotal adjustment of the device, and are not relevant to the recitations of claim 12. Accordingly, independent claim 12 is not anticipated by McCarthy et al.

Regarding independent claim 18, as discussed above in connection with claim 12, McCarthy et al fails to disclose, inter alia, that the flanges on which the teeth are formed having narrowing widths away from the first and second arcuate ends. Additionally, although McCarthy et al discloses translation wheels 346, 347 on the arms 320, the wheels are not perpendicular to one another. Translation is along the arms 320 that are not substantially perpendicular to one another and perpendicular to the

longitudinal axis of the central member formed by the two gears (which is not shown). Although the wheels 346, 347 and the translation axes along the arms 320 **can** become perpendicular to one another, as the arms 320 rotate, claim 18 recites a structural, rather than a functional limitation. As recited in claim 18, the first and second translation axes **are** substantially perpendicular to one another and to the longitudinal axis of the central member. At least for these reasons, independent claim 18 is not anticipated by McCarthy et al.

Independent claim 22 is also not anticipated by McCarthy et al for the reasons discussed above in connection with claims 12 and 18.

Dependent claims 16, and 19 and 21 are also not anticipated but McCarthy et al, because of their dependence from corresponding base claims 12 and 18, as well as for their own recitations.

In summary, although McCarthy et al discloses many embodiments of a bone-adjusting device and variations thereof, none of the disclosed embodiments recites all the limitations of the currently pending claims. Further, it would not have been obvious to combine or otherwise modify the embodiments of McCarthy et al to render the claimed invention obvious without using Applicants disclosure as a blueprint and without relying on impermissible hindsight.

Reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request

that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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